



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

JUN 14 2010

Dr. Jose Valdez
c/o Teresa Céspedes Alarcón, Esq.
Bienert, Miller & Katzman
115 Avenida Miramar
San Clemente, California 92672

RE: MUR 5955
Dr. Jose Valdez.

Dear Ms. Alarcón:

On June 7, 2010, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of violations of 2 U.S.C. §§ 441f and 441a(a), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). A copy of the agreement is enclosed for your information.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 694-1372.

Sincerely,

Roy Q. Luckett
Attorney

Enclosure
Conciliation Agreement

10044273193

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Dr. Jose Valdez

)
)
)
)

MUR 5955

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by the Rudy Giuliani Presidential Committee, Inc. ("RGPC"), and information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Dr. Jose Valdez ("Respondent") knowingly and willfully violated 2 U.S.C. §§ 441f and 441a(a).

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.

§ 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Respondent was employed by WellPoint, Inc. ("WellPoint") as a Senior Vice President for Health Care during the relevant time period.

10044273194

2. Respondent was an authorized fundraiser for the RGPC during the relevant time period.

3. RGPC, the principal campaign committee of Rudy Giuliani's candidacy for President of the United States, is a political committee within the meaning of 2 U.S.C. § 431(4).

4. The Federal Election Campaign Act of 1971, as amended ("the Act") prohibits any person from making a contribution in the name of another person. 2 U.S.C. § 441f. In addition, the Commission's regulations provide that no person may knowingly help or assist any person in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii).

5. The Act also prohibits a person from making a contribution to any candidate and his authorized political committee which exceeds \$2,300. 2 U.S.C. § 441a(a)(1)(A), 11 C.F.R. § 110.1(b)(1).

6. The phrase knowing and willful indicates that "actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H 2778 (daily ed. May 3, 1976); *see also Federal Election Comm'n v. John A. Dranski for Cong. Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (distinguishing between "knowing" and "knowing and willful"). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge" that an action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990).

7. On May 1, 2007, Respondent attended a conference in Washington, D.C. on behalf of WellPoint, with three subordinate WellPoint employees ("WellPoint employees").

10044273195

On the same day, Respondent was also a host for a RGPC fundraiser, held at the same hotel as the conference.

8. Prior to the RGPC fundraiser, Respondent invited the WellPoint employees to attend a closed meeting with then-Presidential Candidate Rudy Giuliani. The WellPoint employees agreed to attend.

9. Before the RGPC fundraiser began, Respondent was informed that RGPC would not accept a \$15,000 contribution check for the WellPoint employees' to attend the RGPC fundraiser, and that each person was required to make an individual contribution to RGPC.

10. Respondent personally reimbursed the WellPoint employees for the contributions, two through personal checks in the amount of \$4,600 each, for contributions made on behalf of two of the employees and their spouses, and one in cash, in the amount of \$2,300, for the contribution made by the third employee, and arranged for the delivery of the reimbursements to the employees through third parties.

11. Respondent understood that he was allowed to contribute up to \$2,300 on his own behalf to a primary election, as well as \$2,300 for his spouse, and another \$2,300 for a general election, plus \$2,300 for his spouse.

12. For the RGPC fundraiser, Respondent signed a donor card that stated:

"This contribution to the Rudy Giuliani Presidential Committee, Inc. made by check or credit card represents my/our personal funds, is not drawn on an account maintained by an incorporated entity and I have read this form."

"The maximum an individual may contribute is \$2,300 per election, with the primary and general elections treated separately."

10044273196

13. RGPC credited the Respondent for soliciting 14 contributions to the RGPC fundraiser, including the five contributions he improperly reimbursed. The RGPC returned the \$11,500 in illegal contributions prior to filing the complaint in this matter.

V. Respondent knowingly and willfully violated 2 U.S.C. §§ 441f and 441a(a).

VI. Respondent will take the following actions:

a. Respondent will pay a civil penalty to the Federal Election Commission in the amount of Thirty Thousand Dollars (\$30,000); pursuant to 2 U.S.C.

§ 437g(a)(5)(B).

b. Respondent will cease and desist from violating 2 U.S.C. §§ 441f and 441a(a).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirement(s) contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral,

10044273197


MUR 5955
Cconciliation Agreement
Dr. Jose Valdez
Page 5 of 5

made by either party or by agents of either party, that is not contained in this written agreement
shall be enforceable.

FOR THE COMMISSION:


Thomasenia P. Duncan
General Counsel

BY:


Ann Marie Terzaken
Associate General Counsel
for Enforcement

6/10/10
Date

FOR THE RESPONDENT(S):


(Name)
(Position)

5-12-10
Date

10044273198